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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/535,515	05/18/2005	Mark A. Daeschel	245-67159-02	9363

24197 7590 10/17/2007  
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EXAMINER
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ASDJODI, MOHAMMAD REZA

ART UNIT	PAPER NUMBER
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4134

MAIL DATE	DELIVERY MODE
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10/17/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/535,515

**Applicant(s)**

DAESCHEL ET AL.

**Examiner**

Asdjodi M. Reza

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>05/18/2005</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

*The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:*

***(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.***

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-5, 13 and 20-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shanbrom (US 2002/0102287 A1) in view of Shatila (US 3,975,551) and Kooistra (US 3,725,547).

Regarding claims 1, 2, 4, 5, and 13, Shanbrom teaches an antimicrobial lees (dregs of wine making) comprising; wine or waste wine, [Abs.], and salt, [Abs.], [¶. 009]. Shanbrom's composition completely prevents any bacterial growth, [¶. 033].

Shanbrom does not teach the presence of sulfur dioxide in composition. However Shatila teaches use of antimicrobial sulfur dioxide in food (potato) preservation by the amount of at least 200 ppm, [C.2, L.39, [C.8, L.9]. Shanbrom and Shatila are analogous because they are from the same field of endeavor in relation to disinfection and microbial contamination control. At the time of invention it would have been obvious to a person of ordinary skill in the art to combine the sulfur dioxide of Shatila with invention of Shanbrom, and the motivation is to increase and fortify antimicrobial properties of disinfecting composition.

Regarding claim 3, Shanbrom does not teach the amount of salt in his composition. However, Kooistra teaches a synergetic antibacterial combination that contains 0-90% salt, [C.3, L.55], [C.7, L.40]. Shanbrom and Kooistra are analogous because they are from the same field of endeavor in relation to disinfection and microbial contamination control. At the time of invention it would have been obvious to a person of ordinary skill in the art to combine the salts of Kooistra with invention of Shanbrom, and the motivation is to increase and fortify antimicrobial properties of disinfecting composition.

Regarding claims 20-23, Shanbrom discloses a waste wine composition capable of complete elimination of bacterial growth over a short period of time, [¶. 033].

Regarding claim 24, the Office realizes that all the claimed effects or physical properties, such as disinfecting the animal carcass are not positively stated by the reference. However, the reference teaches all of the claimed reagents and anti

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bacterial efficacy of the wine based composition. Therefore, the claimed effects and properties would implicitly be achieved by a composition with all the claimed ingredients. If it is the applicant's position that this would not be the case: (1) evidence would need to be presented to support applicant's position; and (2) it would be the Office's position that the application contains inadequate disclosure that there is no teaching as to how to obtain the claimed properties and effects with only the claimed ingredients.

Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shanbrom (US 2002/0102287 A1), as applied to claim 1, in view of Poulos et al. (US 6,132,786).

Shanbrom does not teach the amount of tartaric acid in his composition. However, Poulos et al. teach a long term mold inhibition in food product comprising tartaric acid by the amount of 0.01 to 3%, [C.6, L.60-65], [C.7, L.5-15]. Shanbrom and Poulos et al. are analogous because they are from the same field of endeavor in relation to disinfection and microbial contamination control. At the time of invention it would have been obvious to a person of ordinary skill in the art to combine the tartaric acid of Poulos et al. with the invention of Shanbrom to enhance the efficacy of mold inhibition.

Claims 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shanbrom (US 2002/0102287 A1), as applied to claim 1, in view of Fleet et al. (US 5,104,665).

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Shanbrom does not teach the amount of acetic acid, pH, and alcohol content in his wine based composition. However Fleet et al. teach a fermentation of wine wherein the amount of acetic acid is 0.60 g/l, [C.10, Table-2], pH is about 3.18, [C.10, Table-2], and the alcohol content is 11.5 –12.4% by volum, [C.6, Table-1]. Shanbrom and Fleet et al. are analogous because they both relate to wine base composition. At the time of invention it would have been obvious to a person of ordinary skill in the art to combine the amount of alcohol and acidity of Fleet et al with invention of Shanbrom to make the antibacterial properties of composition more effective.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shanbrom (US 2002/0102287 A1) in view of Kooistra (US 3,725,547), Shatila (US 3,975,551), and Fleet et al. (US 5,104,665).

Shanbrom teaches an antimicrobial lees (dregs of wine making) comprising; wine or waste wine, [Abs.], and salt, [Abs.], [¶. 009]. Shanbrom's composition completely prevents any bacterial growth, [¶. 033].

Shanbrom does not teach the amount salt in his disinfectant wine composition. However, Kooistra teaches a synergetic antibacterial combination that contains 0-90% salt, [C.3, L.55], [C.7, L.40]. Shanbrom and Kooistra are analogous because they are from the same field of endeavor in relation to disinfection and microbial contamination control. At the time of invention it would have been obvious to a person of ordinary skill in the art to combine the salts of Kooistra with invention of Shanbrom, and the motivation is to increase and fortify antimicrobial properties of disinfecting composition.

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Shanbrom does not teach the presence of sulfur dioxide in his composition. However Shatila teaches use of antimicrobial sulfur dioxide in food (potato) preservation by the amount of at least 200 ppm, [C.2, L.39, [C.8, L.9]. Shanbrom and Shatila are analogous because they are from the same field of endeavor in relation to disinfection and microbial contamination control. At the time of invention it would have been obvious to a person of ordinary skill in the art to combine the sulfur dioxide of Shatila with invention of Shanbrom, and the motivation is to increase and fortify antimicrobial properties of disinfecting composition.

Shanbrom does not teach the alcohol content in his wine composition. However Fleet et al. teach a fermentation of wine wherein the alcohol content is 11.5 –12.4% by volum, [C.6, Table-1]. Shanbrom and Fleet et al. are analogous because they both relate to wine base composition. At the time of invention it would have been obvious to a person of ordinary skill in the art to combine the amount of alcohol and acidity of Fleet et al with invention of Shanbrom to make the antibacterial properties of composition more effective.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shanbrom (US 2002/0102287 A1) in view of Kooistra (US 3,725,547), Shatila (US 3,975,551), and Fleet et al. (US 5,104,665).

Shanbrom teaches an antimicrobial lees (dregs of wine making) comprising; wine or waste wine, [Abs.], and salt, [Abs.], [¶. 009]. Shanbrom's composition completely prevents any bacterial growth, [¶. 033].

Shanbrom does not teach the amount salt in his disinfectant wine composition. However, Kooistra teaches a synergetic antibacterial combination that contains 0-90% salt, [C.3, L.55], [C.7, L.40]. Shanbrom and Kooistra are analogous because they are from the same field of endeavor in relation to disinfection and microbial contamination control. At the time of invention it would have been obvious to a person of ordinary skill in the art to combine the salts of Kooistra with invention of Shanbrom, and the motivation is to increase and fortify antimicrobial properties of disinfecting composition.

Shanbrom does not teach the presence of sulfur dioxide in his composition. However Shatila teaches use of antimicrobial sulfur dioxide in food (potato) preservation by the amount of at least 200 ppm, [C.2, L.39, [C.8, L.9]. Shanbrom and Shatila are analogous because they are from the same field of endeavor in relation to disinfection and microbial contamination control. At the time of invention it would have been obvious to a person of ordinary skill in the art to combine the sulfur dioxide of Shatila with invention of Shanbrom, and the motivation is to increase and fortify antimicrobial properties of disinfecting composition.

Shanbrom does not teach the alcohol content in his wine composition. However Fleet et al. teach a fermentation of wine wherein the alcohol content is 11.5 –12.4% by volume, [C.6, Table-1]. Shanbrom and Fleet et al. are analogous because they both relate to wine based composition. At the time of invention it would have been obvious to a person of ordinary skill in the art to combine the amount of alcohol and acidity of Fleet et al with invention of Shanbrom to make the antibacterial properties of composition more effective.



Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shanbrom (US 2002/0102287 A1) in view of Kooistra (US 3,725,547), Shatila (US 3,975,551), and Fleet et al. (US 5,104,665).

Shanbrom teaches an antimicrobial lees (dregs of wine making) comprising; wine or waste wine, [Abs.], and salt, [Abs.], [¶. 009]. Shanbrom's composition completely prevents any bacterial growth, [¶. 033].

Shanbrom does not teach the amount salt in his disinfectant wine composition. However, Kooistra teaches a synergetic antibacterial combination that contains 0-90% salt, [C.3, L.55], [C.7, L.40]. Shanbrom and Kooistra are analogous because they are from the same field of endeavor in relation to disinfection and microbial contamination control. At the time of invention it would have been obvious to a person of ordinary skill in the art to combine the salts of Kooistra with invention of Shanbrom, and the motivation is to increase and fortify antimicrobial properties of disinfecting composition.

Shanbrom does not teach the presence of sulfur dioxide in his composition. However Shatila teaches use of antimicrobial sulfur dioxide in food (potato) preservation by the amount of at least 200 ppm, [C.2, L.39, [C.8, L.9]. Shanbrom and Shatila are analogous because they are from the same field of endeavor in relation to disinfection and microbial contamination control. At the time of invention it would have been obvious to a person of ordinary skill in the art to combine the sulfur dioxide of Shatila with invention of Shanbrom, and the motivation is to increase and fortify antimicrobial properties of disinfecting composition.

Shanbrom does not teach the alcohol content in his wine composition. However Fleet et al. teach a fermentation of wine wherein the alcohol content is 11.5 –12.4% by volume, [C.6, Table-1]. Shanbrom and Fleet et al. are analogous because they both relate to wine based composition. At the time of invention it would have been obvious to a person of ordinary skill in the art to combine the amount of alcohol and acidity of Fleet et al with invention of Shanbrom to make the antibacterial properties of composition more effective.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shanbrom (US 2002/0102287 A1) in view of Kooistra (US 3,725,547), Shatila (US 3,975,551), Poulos et al. (US 6,132,786), and Fleet et al. (US 5,104,665).

Shanbrom teaches an antimicrobial lees (dregs of wine making) comprising; wine or waste wine, [Abs.], and salt, [Abs.], [¶. 009]. Shanbrom's composition completely prevents any bacterial growth, [¶. 033].

Shanbrom does not teach the amount salt in his disinfectant wine composition. However, Kooistra teaches a synergetic antibacterial combination that contains 0-90% salt, [C.3, L.55], [C.7, L.40]. Shanbrom and Kooistra are analogous because they are from the same field of endeavor in relation to disinfection and microbial contamination control. At the time of invention it would have been obvious to a person of ordinary skill in the art to combine the salts of Kooistra with invention of Shanbrom, and the motivation is to increase and fortify antimicrobial properties of disinfecting composition.

Shanbrom does not teach the presence of sulfur dioxide in his composition. However Shatila teaches use of antimicrobial sulfur dioxide in food (potato) preservation by the amount of at least 200 ppm, [C.2, L.39, [C.8, L.9]. Shanbrom and Shatila are analogous because they are from the same field of endeavor in relation to disinfection and microbial contamination control. At the time of invention it would have been obvious to a person of ordinary skill in the art to combine the sulfur dioxide of Shatila with invention of Shanbrom, and the motivation is to increase and fortify antimicrobial properties of disinfecting composition.

Shanbrom does not teach the amount of tartaric acid in his composition. However, Poulos et al. teach a long term mold inhibition in food product comprising tartaric acid by the amount of 0.01 to 3%, [C.6, L.60-65], [C.7, L.5-15]. Shanbrom and Poulos et al. are analogous because they are from the same field of endeavor in relation to disinfection and microbial contamination control. At the time of invention it would have been obvious to a person of ordinary skill in the art to combine the tartaric acid of Poulos et al. with the invention of Shanbrom to enhance the efficacy of mold inhibition.

Shanbrom does not teach the amount of acetic acid, pH, and alcohol content in his wine composition. However Fleet et al. teach a fermentation of wine wherein the amount of acetic acid is 0.60 g/l, [C.10, Table-2], pH is about 3.18, [C.10, Table-2], and the alcohol content is 11.5 –12.4% by volume, [C.6, Table-1]. Shanbrom and Fleet et al. are analogous because they both relate to wine base composition. At the time of invention it would have been obvious to a person of ordinary skill in the art to combine

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the amount of alcohol and acidity of Fleet et al with invention of Shanbrom to make the antibacterial properties of composition more effective.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shanbrom (US 2002/0102287 A1) in view of Kooistra (US 3,725,547), Shatila (US 3,975,551), and Fleet et al. (US 5,104,665).

Shanbrom teaches an antimicrobial lees (dregs of wine making) comprising; wine or waste wine, [Abs.], and salt, [Abs.], [¶. 009]. Shanbrom's composition completely prevents any bacterial growth, [¶. 033].

Shanbrom does not teach the amount salt in his disinfectant wine composition. However, Kooistra teaches a synergetic antibacterial combination that contains 0-90% salt, [C.3, L.55], [C.7, L.40]. Shanbrom and Kooistra are analogous because they are from the same field of endeavor in relation to disinfection and microbial contamination control. At the time of invention it would have been obvious to a person of ordinary skill in the art to combine the salts of Kooistra with invention of Shanbrom, and the motivation is to increase and fortify antimicrobial properties of disinfecting composition.

Shanbrom does not teach the presence of sulfur dioxide in his composition. However Shatila teaches use of antimicrobial sulfur dioxide in food (potato) preservation by the amount of at least 200 ppm, [C.2, L.39, [C.8, L.9]. Shanbrom and Shatila are analogous because they are from the same field of endeavor in relation to disinfection and microbial contamination control. At the time of invention it would have been obvious to a person of ordinary skill in the art to combine the sulfur dioxide of

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Shatila with invention of Shanbrom, and the motivation is to increase and fortify antimicrobial properties of disinfecting composition.

Shanbrom does not teach the alcohol content in his wine composition. However Fleet et al. teach a fermentation of wine wherein the alcohol content is 11.5 –12.4% by volume, [C.6, Table-1]. Shanbrom and Fleet et al. are analogous because they both relate to wine base composition. At the time of invention it would have been obvious to a person of ordinary skill in the art to combine the amount of alcohol and acidity of Fleet et al with invention of Shanbrom to make the antibacterial properties of composition more effective.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Shanbrom (US 2002/0102287 A1) in view of Kooistra (US 3,725,547), Shatila (US 3,975,551), and Fleet et al. (US 5,104,665).

Shanbrom teaches an antimicrobial lees (dregs of wine making) comprising; wine or waste wine, [Abs.], and salt, [Abs.], [¶. 009]. Shanbrom's composition completely prevents any bacterial growth, [¶. 033].

Shanbrom does not teach the amount salt in his disinfectant wine composition. However, Kooistra teaches a synergetic antibacterial combination that contains 0-90% salt, [C.3, L.55], [C.7, L.40]. Shanbrom and Kooistra are analogous because they are from the same field of endeavor in relation to disinfection and microbial contamination control. At the time of invention it would have been obvious to a person of ordinary skill

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in the art to combine the salts of Kooistra with invention of Shanbrom, and the motivation is to increase and fortify antimicrobial properties of disinfecting composition.

Shanbrom does not teach the presence of sulfur dioxide in his composition. However Shatila teaches use of antimicrobial sulfur dioxide in food (potato) preservation by the amount of at least 200 ppm, [C.2, L.39, [C.8, L.9]. Shanbrom and Shatila are analogous because they are from the same field of endeavor in relation to disinfection and microbial contamination control. At the time of invention it would have been obvious to a person of ordinary skill in the art to combine the sulfur dioxide of Shatila with invention of Shanbrom, and the motivation is to increase and fortify antimicrobial properties of disinfecting composition.

Shanbrom does not teach the alcohol content in his wine composition. However Fleet et al. teach a fermentation of wine wherein the alcohol content is 11.5 –12.4% by volume, [C.6, Table-1]. Shanbrom and Fleet et al. are analogous because they both relate to wine base composition. At the time of invention it would have been obvious to a person of ordinary skill in the art to combine the amount of alcohol and acidity of Fleet et al with invention of Shanbrom to make the antibacterial properties of composition more effective.

### ***Correspondence***

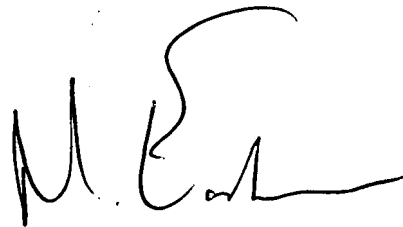
Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Reza Asdjodi whose telephone number is 571-270-3295. The examiner can normally be reached on Monday-Friday 8:00-5:00 EST.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Mark Eashoo can be reached on 571-272-1197. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

M. Reza Asdjodi  
09/21/07

A handwritten signature in black ink, appearing to read 'M. Eashoo', with a stylized flourish at the end.

MARK EASHOO, PH.D.  
SUPERVISORY PATENT EXAMINER

10/ Oct 07